

Our Ref:  
Property:

## Order of the Residential Tenancy Commissioner

Gayle Muddyman [Tenants] and Nest Property [Owner]

This is a formal Order made by the Residential Tenancy Commissioner (the Commissioner) under section 23(1) of the *Residential Tenancy Act 1997* (the Act).

### Property

### Application

The Tenant has lodged an application under section 23(1) of the Act, requesting that I determine whether the Owner's increase in rent is unreasonable.

In determining whether an increase in the rent is unreasonable, I must first find that the increase is valid under the Act and, if valid, assess the reasonableness of the increase by having regard to:

- (a) the general level of rent for comparable residential premises in the locality or a similar locality; and
- (b) any other relevant matter

Section 20 of the Act allows an owner to increase rent:

- (1) An owner, by written notice to the tenant, may increase the amount of the rent payable by the tenant in respect of residential premises if –
  - a. the written residential tenancy agreement for those premises allows for an increase; or
  - b. there is no written residential tenancy agreement for those premises.
- (2) A notice is to specify –
  - a. the amount of the rent as increased; and
  - b. the day from which the increase in the rent takes effect.
- (3) ...an increase in rent may only take effect from a day that is more than 60 days after the day on which the notice is given and is a day that is –
  - a. not less than 12 months after the residential tenancy agreement commenced or was extended or renewed; or
  - b. if rent has been previously increased, more than 12 months after the last increase; or
  - c. if the Commissioner makes an order under section 23(3), more than 12 months after the date of that order.

### Evidence

The Tenant has provided the following evidence to support their application:

- Statement of events;
- Copy of Residential Tenancy Agreement;
- Copy of ingoing condition report; and
- A copy of Notice(s) issued for rent increase.



The Owner has provided the following evidence as reasons why the increase in rent is reasonable:

- Statement of events;
- Photographs of the property; and
- Evidence of comparable properties that have all been successfully tenanted at similar rates.

A copy of the Notice of the rent increase confirms the following:

- Current rent is \$290.00 per week.
- The rent increase is \$50.00 per week.
- Therefore, the new rental amount is \$340.00 per week;
- The increase is due to take effect on 5/04/2019.

The Tenant has provided the following statement:

- *This property sold in September 2015 for \$210,000, now valued at \$250,000.*
- *The rent was \$270.00 per week from 2014 to 2017, and last year they increased it up by \$20.00 per week to \$290.00 and now they want to increase it by another \$50.00 per week to \$340.00.*
- *The new owners have not done any maintenance since they bought the house in 2015, the decking boards and railing are in need of fixing to make it safe for my grandchildren and my son's daughter. My disability pension has not increased and never will to cope with these rent rises.*
- *Also they say the overall Hobart % increase was 11% but they want to go up to 17%.*
- *I do not have a record of maintenance, but you can ask the Nest rental agent for any info you might need.*

The Owner has provided the following submission, addressing comparable properties and characteristics of the property in support of the \$50.00 increase.

- *The tenant was given notice of the rent increase of \$50.00 per week to \$340.00 per week on 12<sup>th</sup> December 2018. The increase is to take effect on 5 April 2019. The tenant has been in the property since 11 April 2014 at an original rent of \$270.00 per week. The rent has only been increased on one prior occasion to \$290.00 per week on 30<sup>th</sup> March 2018.*
- *The property has an updated kitchen, had been painted prior to her moving in, a heat pump in the lounge room, large deck with water views and a very large lock up garage and work shop area in the full fenced yard, please find photos attached of the property prior to the tenant moving in. The owner has also given permission for the tenant to have 2 dogs and 3 cats at the property. The deck needs some maintenance but it is believed to be structurally sound and the gutters also need some attention.*
- *I have included several internet ads for comparable properties that were found on realestate.com.au on Wednesday 16 January 2019, please find attached website brochures of properties that have now been leased and removed from advertising.*
- *The 2 properties at [redacted] are now the only two available on the site for rent in the area.*

Comparable properties within close proximity of subject property:

- [REDACTED] was advertised at \$330.00 per week. This property appears to have a similar kitchen, smaller garage and no deck.
- [REDACTED] was advertised at \$350.00 per week. This property has an older/original kitchen, no garage and no heat pump.
- [REDACTED] was advertised at \$345.00 per week. This property has no garage and appears to be close to original condition with no upgrades.
- [REDACTED] is advertised at \$330.00 per week. This property has an older kitchen, carport only, small shed and wood heater.
- [REDACTED] is advertised at \$330.00 per week. This property has an older kitchen, smaller garage and no deck.

We therefore believe that the rent increase to \$340.00 per week is fair and to market rent for the area.

### **Assessment of Application**

In assessing this application, I note the obligations imposed on the Owner under Section 20 of the Act, which states that the Owner of a property may increase the rent if the written residential tenancy agreement allows for an increase, and provided the following conditions are met:

- a) A written notice is provided to the Tenants stating the amount of the rent as increased and the date the increase takes effect; and
- b) Notice is given at least 60 days prior to the increase taking effect.

Clause 3 (c) of the residential tenancy agreement allows for the Owner to increase the rent.

On 12 December 2018, the Owner notified the Tenant that the rent would increase by \$50.00 from \$290.00 to \$340.00 per week. The Owner has therefore provided the Tenant with 60 days' notice as required, with the increase not taking effect until 5 April 2019.

The Tenant applied for an Order of unreasonable rent increase on 9 January 2019 just under a month after the Notice was received, therefore less than 60 days after the Tenant was notified of the increase. Taking into account the abovementioned information, I am satisfied that the increase itself is *valid* and have noted the following with regards to whether this increase is *reasonable*.

Investigations conducted by this office revealed the following:

- The median price for a 3 bedroom property (house) in Rokeby is \$350.00 per week;<sup>1</sup>

<sup>1</sup> Based on house listings from 1 February 2018 until 1 February 2019. 3 bedroom price is based on 33 house listings. Data supplied by realestate.com.au.



- The median price for a 3 bedroom property on the Eastern Shore for the September quarter 2018 was \$385.00 per week.<sup>2</sup>

In considering the data, it should be noted that the only statistics available reflect *median*, not *mean*, values for rent. The historical data used by realestate.com.au to calculate the median rent is not available to calculate the mean value for rent for those same properties. I further remark that historical data of realestate.com.au is not necessarily representative of the market trend for rental properties.

I have therefore reviewed currently advertised rental prices of comparable properties in Rokeby and neighbouring suburbs (in conjunction with the properties already outlined in the Owner's submission) and according to publicly available advertising, I have identified the following properties:

Address	Suburb	Features	Weekly Rent
[REDACTED]	Rokeby	3 bedroom 1 bathroom 2 car spots. No deck/garage	\$330.00 per week
[REDACTED]	Clarendon Vale	3 bedroom 1 bathroom No deck, garage and original condition.	\$335.00 per week
[REDACTED]	Clarendon Vale	3 bedroom 2 bathroom Brand new build	\$360.00 per week

I further note that:

- Our database shows currently rented properties for 3 bedroom 1 bathroom in the near vicinity are equal to or exceed the increased rental of the property subject to this application.
- Images of the property were located online, which refer to the property for sale in May 2015. It is assumed the photographs were taken at this time. Observations of the property include updated kitchen, a heat pump in the lounge room, large deck with water views and a very large lock up garage and work shop area in the full fenced yard. It is further noted that this property is pet friendly.
- It is evident that there is currently a limited supply of similar rental properties in the area currently with only one property currently available online in Rokeby, asking \$10.00 lower than the property subject to the application, at 157 Tollard Drive Rokeby but is noticeably smaller, with no deck or garage.
- The property subject to this application is a 3 bedroom, tidy home in a quiet location in Rokeby, with a good sized living area, water outlook, pets permitted, close to shops

<sup>2</sup> Data collected by MyBond, the Rental Deposit Authority and compiled by Tenants' Union of Tasmania.



and with a large garage. At a proposed rent of \$340.00 per week, this is not unreasonable when compared to the currently advertised and rented properties.

- At a proposed rent of \$340.00 per week, this property is asking \$10 below the median price for properties in the Rokeby area on realestate.com.au.
- It is noted that the data collected by MyBond, the Rental Deposit Authority and that compiled by the Tenants' Union of Tasmania indicate a median rent of (\$265.00 per week for the June 2018 quarter (which is an increase of 10.4% for the year)). Nevertheless, our database shows currently rented properties for 3 bedroom 1 bathroom in the near vicinity are on par or exceed the increased rental of the property subject to this application.
- It is further noted that the rent at the property did not increase from 2014 until 2018 and stayed at an original rent of \$270.00 per week for this period. The rent has only been increased on one prior occasion to \$290.00 per week on 30 March 2018.
- In respect to the tenant's contention that the property requires repairs to the deck, I note that the Act allows remedy for a tenant where they are not satisfied an owner has fulfilled their maintenance and repair obligations. This is a process to be considered and pursued independent of this application.
- However, I note the agent has submitted evidence in response to this application that confirms that they are aware additional maintenance is currently required to the deck and gutters and illustrates that no modifications, renovations or upgrades have occurred at the property since April 2014.

The basis of the Owner's rationale for the increase, then, is simply market increase. I am obligated, in any event, to assess rent increases in line with market value. It is noted that the current market is trending upwards, with rentals in high demand, which is driving rental prices higher. The Act does not require or enable me to regulate the market, simply to assess rents in line with what the market is currently achieving.

On the foregoing bases, considering the currently advertised properties, their condition and value; and the condition and characteristics of the property subject of the application (no improvements or renovations completed recently but water views, large deck and large lock up garage), I am satisfied that the increase as per the Notice is reasonable and in line with current market rents. I note that while this is a large weekly increase, the property was likely achieving below market rent previously.

**Order**

I Order that the increase in rent as stipulated in the Notice is valid.

I Order that the increase in rent as stipulated in the Notice is reasonable having regard to the general level of rents for comparable residential premises in the locality/similar locality and the overall condition of the property.

**Appeal**

The Owner or Tenant may apply to the Court to Appeal this Order within 60 days. If you do not lodge the appeal in the required timeframe, the Magistrate may dismiss the matter as out of time.

If an application is made to the Court, this Order is of no effect, unless the application is withdrawn. The Court is to determine such an application as if the Commissioner had not made this Order.

Signed



Anna Hughes  
Delegate of the Residential Tenancy Commissioner

Date: 21 February 2019

### **Important Information**

Under Section 36A(5) of the *Residential Tenancy Act 1997*, a person may appeal to a magistrate against the Order of the Residential Tenancy Commissioner within 60 days after the receiving this notice. A magistrate will treat the matter as a new issue, and may confirm or vary the Order.

**If you are intending to appeal against this order, it is recommended that you contact the Magistrates Court as soon as possible.**

#### **Hobart Magistrates Court**

Address: 23 - 25 Liverpool Street  
Hobart Tasmania 7000  
Telephone 03 616 57122 ~ Civil Division

#### **Burnie Magistrates Court**

Address: 38 Alexander Street  
Burnie Tasmania 7320  
Telephone: 03 6477 7140

#### **Devonport Magistrates Court**

Address: 8 Griffith Street  
Devonport Tasmania 7310  
Telephone: 03 6478 4353

#### **Launceston Magistrates Court**

Address: 73 Charles Street  
Launceston Tasmania 7250  
Telephone: 03 6777 2945  
Website: <http://www.magistratescourt.tas.gov.au>